

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	§ § § § § § § § § §	CIVIL ACTION No. 3:15-cv-03157-D
PLAINTIFF,		
VS.		
ACCENTCARE, INC.,		
DEFENDANT.		

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Pursuant to *Fed. R. Civ. P.* 56, Defendant respectfully moves for summary judgment. The motion is based on the following grounds.

A. REGARDING PLAINTIFF’S ADA FAILURE-TO-ACCOMMODATE CLAIM:

First, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to establish that an accommodation was necessary in order to permit Alisia Beasley to perform the essential functions of her job.

Second, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the first element of its *prima facie* case, *i.e.*, that Alisia Beasley was a qualified individual with a disability.

Third, as a matter of law, the EEOC’s *Complaint* conclusively negates the first element of its *prima facie* case, *i.e.*, that Alisia Beasley was a qualified individual with a disability.

Fourth, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the second element of its

prima facie case, *i.e.*, that as a result of her bipolar and ADHD conditions Alisia Beasley suffered from any actual consequential limitations of which AccentCare was aware.

Fifth, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the third element of its *prima facie* case, *i.e.*, that AccentCare failed to provide a reasonable accommodation to the known limitations of any disability suffered by Alisia Beasley.

Sixth, as a matter of law, indefinite leave is not a reasonable accommodation.

Seventh, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to show that AccentCare's failure to grant Alisia Beasley additional leave through July 12, 2013, caused Beasley any harm.

B. REGARDING PLAINTIFF'S DISCRIMINATORY DISCHARGE CLAIM:

First, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the second element of its *prima facie* case, *i.e.*, that Alisia Beasley was a qualified individual with a disability.

Second, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the fourth element of its *prima facie* case, *i.e.*, that Alisia Beasley was disparately treated regarding her request for leave or her discharge.

Third, as a matter of law, the EEOC's *Complaint* conclusively negates the second element of its *prima facie* case, *i.e.*, that Alisia Beasley was a qualified individual with a disability.

Fourth, adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence to support the fourth element of its *prima facie* case, *i.e.*, that Alisia Beasley was discharged because of disability.

Fifth, as a matter of law, the EEOC's admission in discovery that Alisia Beasley was not disparately treated negates the fourth element of the EEOC's *prima facie* case.

Sixth, even assuming, *arguendo*, that the EEOC can establish a *prima facie* case of discriminatory discharge because of disability, as a matter of law (a) AccentCare has articulated legitimate non-discriminatory reasons for Beasley's discharge; and (b) adequate time for discovery has passed and the EEOC has no admissible summary judgment evidence sufficient to raise a genuine issue of material fact on the issue of pretext.

CONCLUSIONS AND REQUESTED RELIEF

For all of the foregoing reasons, Defendant's *Motion for Summary Judgment* should be, in all things, **GRANTED**.

Respectfully Submitted,

/s/ John L. Ross

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

Pursuant to *Fed. R. Civ. P.* 5(b)(2)(E) and (b)(3), I certify a true and correct copy of the foregoing document was filed electronically on the 13th day of September 2016. Thereby, through the electronic filing system, a copy of the foregoing document was served on Plaintiff's counsel of record.

/s/ John L. Ross

JOHN L. ROSS